

### REMARKS/ARGUMENTS

Claims 1-10 and 25-36 are pending. Claims 1-4 and 7-10 have been Amended. Claims 6 and 11-24 have been Canceled. Claims 25-36 are New.

The Claims were previously restricted between composition and process claims, which were 1-17 and 18-24, respectively. Currently, Claims 1-10 and 25 are to compositions, which correspond to the elected Group I of the restriction.

Claims 26-36 correspond to the non-elected Groups II-VII, the process claims. The process claims contain all the limitations of the amended Group I claims and are hereby requested for rejoinder with the elected claims. The examiner has stated that when a restriction is required between product and process claims, if the applicant elects claims directed to the product, and a product claim is subsequently found allowable, then withdrawn process claim that depend from or otherwise include all the limitations of the allowable product claim will be rejoined in accordance with the provisions of MPEP §821.94.

Applicant respectfully requests the entrance of the amendments to the claims. The claims have been amended to claim more precisely the disclosed invention. The amendments have not been made to narrow the claims for patentability.

#### **Claims 3 and 17**

Claims 3 and 17 were objected to for the informality of no period at the end of the sentence. Applicant has amended Claim 3 to add a period at the end of the sentence. Claim 17 has been canceled.

#### **Claims 2-3 and 5-9**

Claims 2-3 and 5-9 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite. The phrase "low levels" in Claim 3 was deleted and the more precise phrase of "less than 40%" was inserted.

Claim 6 was deleted.

Claim 2 contains the phrase "natural extract". The meaning of this phrase is to be understood as defined by the FDA.

*The term "natural extract" = Nonsynthetic (natural): A substance that is derived from mineral, plant, or animal matter and does not undergo a synthetic process as*

*defined in section 6502(21) of 7 U.S.C. 6502(21) (the Act). For the purposes of this part, nonsynthetic is used as a synonym for natural as the term is used in the Act. [(21) Synthetic: The term "synthetic" means a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes.]*

#### **Claims 1 and 11-17**

Claims 1 and 11-17 were rejected under 35 U.S.C. 102(b) as being anticipated by Tan (US6,350,453). Claim 1 contains the limitations "greater than 60% of the tocols are tocotrienols" and "at least one ingredient selected from the group consisting of tocol containing material and non-tocol containing material". Tan '453 discloses a method of extracting substances from annatto; however the '453 patent does not disclose a "composition of annatto extract and an ingredient of tocol containing material or non-tocol containing material, wherein greater than 60% of the tocols are tocotrienols."

Claims 11-17 have been canceled.

#### **Claims 1-2, 6 and 11-17**

Claims 1-2, 6 and 11-17 were rejected under 35 USC 102(e) as being anticipated by Levy et al. (US2003-0104090) [US application 10/309,732]. Claim 1 and the dependent claim 2, contain the limitation of "greater than 60% of the tocols are tocotrienols". Additionally Claim 2 includes the limitation of a "natural extract from a plant". Levy '732 discloses a supplement containing annatto; however the '732 application does not disclose a composition of annatto extract with "greater than 60% of the tocols are tocotrienols."

Claims 6 and 11-17 have been canceled.

#### **Claims 1-17**

Claims 1-17 were objected under 35 USC 103(a) as being unpatentable over Tan (US6,350,453), Wright et al. (US5,217,992) and Levy et al. (US2003-0104090) [US application 10/309,732]. Independent Claim 1 and its dependent Claim 2 contain the limitation of "greater than 60% of the tocols are tocotrienols". Claim 3 and the claims dependent have the further

limitation of "less than 40% of the tocols are tocopherols." None of the cited references or combinations of references discloses a composition with these characteristics.

Claims 6 and 11-17 have been canceled.

### **Conclusion**

The claims have been amended to claim more precisely the disclosed invention. The amendments have not been made to narrow the claims for patentability.

No new matter has been added by the amendments to the claims.

The limitation of an "annatto extract with greater than 60% of the tocols are tocotrienols" can be found throughout the specification and listed research papers incorporated by reference, for example page 35, paragraph [0088].

The limitation of "less than 40% of the tocols are tocopherols" can be found throughout the specification listed and research papers incorporated by reference, for example page 24, paragraph [0050].

Various examples of "tocol containing material" and "non-tocol containing material" can be found throughout the specification and listed research papers incorporated by reference, for example Table 3.

In view of Applicant's remarks, it is respectfully submitted that the present application is in condition for allowance and Claims 26-36, corresponding to the non-elected Groups II-VII, should be rejoined and examined for allowance. Should the Examiner have any remaining concerns which might prevent the prompt examination of the application, the Examiner is respectfully invited to contact the undersigned at the telephone number appearing below.

No fees are believed due; however, please charge any additional fees, including any fees for additional extension of time, or credit overpayment to credit card information.



Kirk Hahn  
Agent of Record  
Registration No. 51,763  
Customer Number 038051  
714-544-2934